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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Case No. 3:18-cv-07591-CRB

**ANDA INC.'S NOTICE OF MOTION AND
MOTION TO DISMISS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

PURDUE PHARMA L.P., et al.,

Defendants.

Date: June 19, 2020
Time: 10:00 a.m.
Courtroom: 6, 17th Floor
Judge: Hon. Charles R. Breyer

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on June 19, 2020 at 10:00 a.m., in the courtroom of the Honorable Charles R. Breyer, United States District Court for the Northern District of California, San Francisco Division, Courtroom 6, 450 Golden Gate Avenue, San Francisco, California, Defendant Anda, Inc. (“Anda”) will, and hereby does, move to dismiss Plaintiffs’ First Amended Complaint in its entirety with prejudice as it applies to Anda pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b).

This Motion is based upon this Notice, the accompanying Memorandum of Points and Authorities in Support of the Motion to Dismiss, Defendants' Joint Motion to Dismiss First Amended Complaint ("Defendants' Omnibus Br."), any reply memoranda, the pleadings and files in this action, and such other matters that may be presented at or before the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Anda, Inc. (“Anda”), through its undersigned counsel of record, hereby moves the Court to dismiss all of Plaintiffs’ claims against Anda in the First Amended Complaint (“FAC”), ECF No. 128, pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure. Anda also joins Defendants’ Joint Motion to Dismiss First Amended Complaint (“Defendants’ Omnibus Br.”).

I. PRELIMINARY STATEMENT

Despite its extraordinary length, Plaintiffs' FAC fails to allege a *single* tortious act or omission by Anda. Plaintiffs filed a 925 paragraph, 284-page amended complaint but have not mustered even *one* allegation that hints at any impropriety by Anda, under any theory. In fact, the FAC contains only *one* paragraph of Anda-specific allegations, which merely alleges innocuous jurisdictional facts. *See* FAC ¶ 168. Otherwise, Plaintiffs rely on generic and conclusory allegations lumping Anda in with the long list of other "Distributor Defendants," "RICO Supply Chain Defendants" or "Defendants," or allegations against specific other parties. Federal Rules of Civil Procedure 8 and 9(b) require Plaintiffs to make detailed allegations sufficient to give Anda on fair notice of the wrongs *it* allegedly committed. The FAC does not do so and fails to articulate, under *any* theory, *any* facts capable of apprising Anda of the wrongs of which it is accused.

At most, the FAC alleges that Anda *lawfully* distributed prescription opioids to licensed pharmacies that may have served residents in Plaintiffs' communities. This allegation is insufficient to

1 support any of the FAC's three counts against Anda: (1) Violation of RICO, 18 U.S.C. § 1961 *et seq.*
 2 (Count II); (2) Statutory Public Nuisance (California Civil Code §§ 3479-3480) (Count III); and (3)
 3 Violation of California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) ("UCL")
 4 (Count IV). Further, even if the FAC did contain substantive allegations against Anda, which it does not,
 5 these three causes of action are otherwise legally deficient for the reasons set forth in Defendants'
 6 Omnibus Br., which Anda joins and adopts. Therefore, the FAC's claims against Anda should be
 7 dismissed with prejudice.

8 **II. BACKGROUND**

9 As to Anda, the FAC contains one lone paragraph of specific allegations:

10 Defendant Anda, Inc., ("Anda") through its various DEA registrant subsidiaries and
 11 affiliated entities, including but not limited to, Anda Pharmaceuticals, Inc., is the fourth
 12 largest distributor of generic pharmaceuticals in the United States. Anda is a Florida
 13 corporation with its principal offices located in Weston, Florida. In October 2016,
 14 defendant Teva acquired Anda from Allergan plc (i.e., defendant Actavis) for \$500 million
 15 in cash. At all times relevant to this complaint, Anda distributed prescription opioids
 16 throughout the United States, including in California and San Francisco specifically.

17 FAC ¶ 168. Aside from these benign allegations and a cursory reference to Anda in alleged statistics
 18 from DEA ARCOS data of distributors' market shares of opioids sold in San Francisco, FAC ¶ 45, the
 19 FAC relies entirely on general and conclusory allegations against groups of defendants to state claims
 20 against Anda.

21 **III. ARGUMENT**

22 The Court should dismiss all claims against Anda with prejudice, pursuant to Rule 12(b)(6) and
 23 Rule 9(b) of the Federal Rules of Civil Procedure.

24 **A. Standard**

25 To survive a motion to dismiss under Rule 12(b)(6), a complaint must plead "enough facts to
 26 state a claim to relief that is plausible on its face." *Chavez v. Wynnar*, 421 F. Supp. 3d 891, 897 (N.D.
 27 Cal. 2019) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In meeting this
 28 threshold pleading standard, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Holley v. Gilead Sciences, Inc.*, 410 F. Supp. 3d 1096, 1101 (N.D. Cal. 2019) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A pleading must "provide sufficient notice to all of the Defendants as to the nature of the claims being

1 asserted against them,” rather than levying general allegations against a group of defendants. *Adobe Sys.*
 2 *Inc. v. Blue Source Grp., Inc.*, 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015) (quoting *Villalpando v. Exel*
 3 *Direct Inc.*, No. 12-CV-04137 JCS, 2014, 2014 WL 1338297, at *5 (N.D. Cal. Mar. 28, 2014)).
 4 Moreover, for fraud-based claims, Rule 9(b) requires that a plaintiff “must state with particularity the
 5 circumstances constituting fraud.” *Ahern v. Apple Inc.*, 411 F. Supp. 3d 541, 552 (N.D. Cal. 2019). “The
 6 circumstances constituting the fraud must be ‘specific enough to give defendants notice of the particular
 7 misconduct which is alleged to constitute the fraud charged so that they can defend against the charge
 8 and not just deny that they have done anything wrong.’” *Mou v. SSC San Jose Operating Co. LP*, 415 F.
 9 Supp. 3d 918, 924 (N.D. Cal. 2019) (quoting *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985)).

10 **B. The FAC Must Be Dismissed Because It Does Not Allege Any Facts Supporting A**
 11 **Reasonable Inference of Wrongdoing by Anda**

12 Plaintiffs’ *single paragraph* of Anda-specific allegations does not allege any wrongdoing
 13 whatsoever. As to Anda, the remainder of the FAC contains only conclusory allegations, improper group
 14 pleading, or specific to other Defendants. None of these, separately or taken together, is capable of
 15 withstanding Anda’s motion to dismiss.

16 First, the lone paragraph of Anda-specific allegations asserts no facts that, if proven, would
 17 constitute any wrongdoing capable of supporting any of Plaintiffs’ claims. To the contrary, the only
 18 inference that can reasonably be drawn from this paragraph is that Anda *lawfully* distributed prescription
 19 opioids in California, including San Francisco.

20 Second, the remainder of the FAC contains only conclusory group allegations against
 21 “Defendants,” “Distributor Defendants” or the “RICO Supply Chain Defendants.” For example, the
 22 FAC states that “Distributor Defendants” “failed to perform adequate due diligence on their customers
 23 (FAC ¶ 50) and failed to report or unlawfully filled suspicious orders of prescription opioid
 24 medications” (*Id.* ¶¶ 629, 642). The FAC does not set out any facts to suggest that such conclusory
 25 allegations apply to Anda. It does not describe a single wrongful sale or distribution transaction, or any
 26 specific opioid medication improperly distributed by Anda, let alone such an order Anda failed to report.
 27 These types of unsubstantiated conclusory allegations appear throughout the FAC but are incapable of
 28 withstanding a motion to dismiss under Rule 12(b)(6), much less a challenge under Rule 9(b). *See, e.g.*,

1 *Fabian v. LeMahieu*, Case No. 19-CV-00054-YGR, 2019 WL 4918431, at *11 (N.D. Cal. Oct. 4, 2019)
2 (granting motion to dismiss on claim in which plaintiff “baldly alleges” a legal duty).

3 Third, Plaintiffs’ attempts to lump Anda in with other defendants, even coupled with the single
4 paragraph of Anda-specific allegations, is legally incapable of furnishing Anda the required notice of
5 Plaintiffs’ claims. *See Fronda v. Staffmark Holdings, Inc.*, Case No. 15-CV-02315-MEJ, 2015 WL
6 3866860, at *3 (N.D. Cal. June 22, 2015) (dismissing claims based on vague and conclusory group
7 allegations that “each Defendant acted in all respects pertinent to this action as the agent of the other
8 Defendants, carried out a joint scheme, business, plan or policy … and that the acts of each Defendant
9 are legally attributable to each of the other Defendants”). Plaintiffs’ reliance on group pleading is also
10 fatal to their fraud-based claims.

11 Fourth, Plaintiffs cannot rely on the alleged wrongful conduct by specific other defendants to
12 state a claim against Anda, particularly when there is no allegation of any facts tying that conduct to
13 Anda. For instance, Plaintiffs’ RICO and the UCL claims are based on alleged misrepresentations in the
14 marketing and distribution of prescription opioid products. *See, e.g.*, FAC ¶¶ 868, 880, 910. But Anda,
15 as a distributor of pharmaceutical products, does not market or promote opioid products, and the FAC
16 does not allege that it does. In fact, Anda is not mentioned *anywhere* in the nearly 96 pages the FAC
17 devotes to advertising, marketing, and promotion of opioids. *See, e.g.*, FAC ¶¶ 225-546. Moreover, the
18 FAC does not contain *any* specific allegation that Anda made any representation, false or otherwise,
19 regarding opioid products or their distribution, or that Plaintiffs or any consumer received or relied upon
20 any such representation.

21 In short, Plaintiffs’ claims against Anda cannot proceed because the FAC alleges no tortious acts
22 or omissions specifically against Anda.

23 **C. The Fraud-Based Claims Must Also Be Dismissed Under Rule 9(b)**

24 The legal insufficiency of Plaintiffs’ claims against Anda is even more glaring with respect to the
25 purported claims for violation of the UCL, Cal. Bus. & Prof. Code §17200 *et seq.*, and RICO, U.S.C.
26 §1961 *et seq.* For fraud claims, “a party must state with particularity the circumstances constituting
27 fraud or mistake.” Fed. R. Civ. P. 9(b). “Rule 9(b) does not allow a complaint to merely lump multiple
28 defendants together but requires plaintiffs to differentiate their allegations when suing more than one

1 defendant and inform each defendant separately of the allegations surrounding his alleged participation
 2 in the fraud.” *United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016) (quoting
 3 *United States ex rel. Lee v. Corinthian Colls.*, 655 F.3d 984, 997-98 (9th Cir. 2011)). Complaints that do
 4 not allege facts regarding each defendant’s involvement in the alleged fraud, including specific facts as
 5 to the defendant’s alleged misrepresentations, must be dismissed. *Garrison v. Oracle Corp.*, 159 F.
 6 Supp. 3d 1044, 1075 (N.D. Cal. 2016) (quoting *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir.
 7 2007)) (“To comply with Rule 9(b), allegations of fraud must be specific enough to give defendants
 8 notice of the particular misconduct which is alleged to constitute the fraud charged so that they can
 9 defend against the charge.”).

10 Though the FAC purports to make general allegations against defendants to support its fraud-
 11 based claims (see FAC ¶¶ 860, 865, 912), it does not include a single specific allegation of
 12 misrepresentation or fraud by Anda. As such, Plaintiffs have not satisfied their heightened pleading
 13 burden under Rule 9(b), and their fraud-based claims against Anda (Counts II and IV) must be
 14 dismissed. See *Sugarman v. Muddy Waters Capital LLC*, Case No. 19-CV-04248-MMC, 2020 WL
 15 633596, at *4 (N.D. Cal. Feb. 3, 2020) (granting motion to dismiss on claim of fraudulent behavior in
 16 furtherance of conspiracy on the grounds that “plaintiffs do not allege with any specificity facts to
 17 support such conclusory assertion”).

18 **IV. CONCLUSION**

19 For the foregoing reasons and those stated in Defendants’ Joint Motion to Dismiss First
 20 Amended Complaint, Anda respectfully requests that the Court grant its motion to dismiss Plaintiffs’
 21 FAC with prejudice as to Anda, and grant such further relief that the Court deems fair and just.

22 DATED: April 17, 2020

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24 /s/ Alan. R. Ouellette

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 17, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

DATED: April 17, 2020

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